

Speech by Judge Michael Reilly, Inspector of Prisons
at the 9th Annual IHRC & Law Society of Ireland Conference
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Theme of Address: Protecting Human Rights in Prisons

The theme of this workshop – protecting Human Rights in Prisons – opens up such a wide topic that I fear I can only touch on the more important aspects of prisons, prisoners and the obligations that we as a society have towards those in our prisons.

Professor Andrew Coyle has stated that – “*prisons operate on the authority of citizens and their Governments and these have a responsibility to monitor what happens inside prisons in their name*”. It is also true to say that the laws under which persons are imprisoned are our laws in that they are passed by the Oireachtas on our behalf and by extension with our consent. Therefore, we as the citizens of this country have responsibility for imprisoning people, for the operation of our prisons and for the prisoners kept in our prisons. We cannot hide behind a belief that this is somehow some other persons or bodies responsibility. It is ours.

I would like at the outset to refer to the generous contribution made by Mr. Alan Shatter T.D. Minister for Justice, Equality and Defence on 16 September last at the Annual Lecture of the Irish Penal Reform Trust when he acknowledged his commitment to the betterment of our prisons, his wholehearted support for international best practice in prisons and his pledge that the human rights of prisoners be vindicated.

This is not an academic paper rather it is based on my experience gained over the last four years.

Initially two basic principles must be borne in mind – imprisonment should only be used as a sanction of last resort and imprisonment is punishment and is not for punishment. Madam Chairperson the first of these two basic principles does not fall within what is envisaged in the theme of this session but subject to your agreement I

would like at the end of this presentation to depart, if I may, from the main theme and say some words on the first of these principles, namely, that imprisonment should be used as a sanction of last resort.

We have fourteen prisons in this country. It is fully accepted by all that our prisons are overcrowded, that many are past their sell by date, that slopping out is the norm in four prisons, that a higher percentage of prisoners suffer from mental disorders than in the population as a whole, that drugs are a problem and that the rate of recidivism is high.

I have already stated that we as the citizens of this country have responsibility for imprisoning people, for the operation of our prisons and for the prisoners kept in our prisons. You might ask – what authority do we have, what obligations do we have and finally is our authority and are our obligations underpinned by law. Prison systems must always operate within a rule-of-law framework based on human rights principles.

When I was appointed Inspector of Prisons with effect from 1 January 2008 I, naively, thought that I would find published standards referenced to domestic and international best practice against which I could benchmark prisons or that, at the very least, I would find this in concise form in some Irish publication. I was disappointed on both counts. This presented me with a dilemma as my mandate under the Prisons Act 2007 is to report to the Minister as provided for in the Act. I asked people what I thought I should concentrate on. People told me that I should perhaps react to criticisms of our prisons by bodies such as the CPT, by people or groups with an interest in prisons and prisoners, or NGOs in this country. I considered this and rejected it as a way forward. I decided I would be proactive in identifying human rights in prisons, in giving advice on how these should be vindicated and in policing the vindication of these human rights. I knew, therefore, that I would have to publish Standards for the Inspection of Prisons.

In July 2009 I published general standards for the inspection of prisons. I published a supplement relating to juveniles in September 2009 and a further supplement relating to women prisoners in February 2011.

These standards are informed by domestic and international obligations. Our domestic obligations are dictated by our Constitution, by our domestic laws (both primary and secondary legislation), by our jurisprudence and by other published standards such as the Irish Prison Service Healthcare Standards that were developed in 2006. Our international obligations are determined by the many international treaties emanating from the United Nations and the Council of Europe that we, as a country, are party to, the many non binding international instruments emanating from such bodies, the jurisprudence of the European Court of Human Rights, the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). In compiling the standards I took account of the standards that apply in many countries especially England, Scotland and the Province of Western Australia. I was mindful of the guidance available from the publications of such reputable bodies as the United Nations and the Council of Europe. I obtained advice from my colleagues Dame Anne Owers, Inspector of prisons for England and Wales and Dr. Andrew McLellan, retired Inspector of Prisons for Scotland, from Professor Andrew Coyle of the International Centre for Prison Studies, Kings College, London, from members of the CPT and from the International Penal and Penitentiary Foundation.

Despite publishing the standards that I have referred to I have found it necessary to elaborate on these standards in order that the Irish Prison Service, the management of prisons and others with an interest in prisons could be under no illusion as to the obligations that are owed to prisoners in order that best international practice is adhered to.

My reports cover the main areas where concerns in a human rights context could be raised regarding our prisons. These reports are guided by the same principles as are my standards already referred to. In these reports I also set out in detail not only our obligations but also how we as a country, if found to be in breach of our obligations, can face criticism not only from my office but from international bodies such as the CPT. I also draw attention to the fact that we could also face sanctions not alone in the European Court of Human Rights but also in our domestic courts for breaches of our obligations.

I do not intend in this presentation going through all of the advice that is contained in my reports. They are all on my office website *www.inspectorofprisons.gov.ie* . I will refer briefly to certain important issues that I have given guidance on.

My report titled “*An examination of duties and obligations owed to prisoners*” sets out the size of cells as required for single, double or multiple occupancy. It should be 7m² for one prisoner with an additional 4m² for each additional prisoner. This is the first occasion that such a clear statement as to cell size has been made. In cell sanitation should be provided which must be screened if more than one prisoner is in the cell. On taking up my appointment I was informed that it would not be possible to provide in cell sanitation in Mountjoy Prison. In cell sanitation is now in all of C Wing which will be reopened in approximately 8 weeks. In this report I also set out the services and regimes that should be provided for prisoners. I point out that not alone must a prison comply with its accommodation obligations but side by side with this it must have appropriate services and regimes in place. It could be that a prison could comply with accommodation requirements but if it did not have the required services and regimes it would still be overcrowded.

My report titled “*Investigation on the use of Special Cells in Irish Prisons*” details the two types of cells falling under this designation – safety observation and close supervision cells. I distinguish between the different classes of prisoners who should be transferred to these cells. I point to the positive obligations owed to prisoners in these cells. I have given guidance to prison management on all aspects of best practice. Since the publication of my report I have been working with prison management in our prisons to ensure that they understand all of their obligations with regard to safety observation and close supervision cells. At present changes to the Irish Prison Rules are being drafted to give effect to the advice given in this report. Prisoners in safety observation cells are the most vulnerable in the prison system. They have no voice. This is an area that will always require strict monitoring.

My report titled “*Best practice relating to prisoners’ complaints and prison discipline*” does as it says on the cover. Any complaints or disciplinary procedures must be fair and transparent and there must be confidence in the system. The present procedures relating to both topics fail on all counts. This report deals with the legal requirements for a complaints system. I pointed out that it was for the Minister to

decide on a model. In August the Minister asked me to – “*provide a brief report on a prisoner complaints model that could be introduced in Ireland which would:- meet the criteria of best international practice, be viewed as fair and transparent, and, attract public confidence*”. This is a wide topic which will be breaking new ground. I am working on this report and hope to be in a position to furnish same to the Minister before the end of the year. It is premature to speculate on what I might recommend but I am only too conscious that a proper complaints system is absolutely essential and is one of the benchmarks against which any prison system should be judged.

The Irish Prison Service is looking at the disciplinary procedures in light of my report. I am working closely with the Irish Prison Service which is drafting guidelines. The maintenance of discipline in a prison is necessary in order to provide safe and secure custody. There must be clear disciplinary procedures in place, the breaches of prison discipline and the sanctions must be clearly set out and the disciplinary procedure must not be used arbitrarily. The prison discipline system can affect the way in which prisoners perceive the fairness of the prison regime. The disciplinary mechanisms should be mechanisms of last resort and where possible mediation should be used to resolve disputes. Prisoners retain all rights that are not lawfully taken away by the decision to send them to prison. This is an important principle when one is dealing with disciplinary procedures. One can see in disciplinary files a penalty of “loss of privileges”. These so called privileges could range from loss of contact with family to loss of recreation. These I wish to point out in the strongest possible terms are not privileges but rights. Rights that prisoners have cannot be taken from them without just cause and due process.

My report titled “*Best practice relating to the investigation of deaths in prison custody*” again does as it says on the cover. This is a very important topic from a human rights point of view where best practice has not been followed to date. The Irish Prison Service has taken my advice on board and in a number of recent cases of deaths in custody have established an independent body (totally independent of prisons or the department) to investigate and report on these deaths. I will, in due course, have oversight of these investigations and will then be able to comment as to whether they meet the criteria of best practice. If they do the same procedure will be adopted in all future cases of such deaths in custody.

My report titled “*Guidance on physical healthcare in a prison context*” is of recent vintage. It deals only with the physical healthcare of prisoners and sets out the care that prisoners can expect. I have not dealt with the even more important aspect of mental healthcare in a prison context. I stated in my report that this is a complex matter. I further stated that the Commission of Investigation into the killing of Mr. Gary Douche is tasked with, *inter alia*,

“....to review policies, practices and procedures regarding the safety of prisoners in custody.....to review protocols for those prisoners with specific behavioural problems or vulnerabilities (psychiatric, violent or disruptive) or those in need of additional protection and to make recommendations....”.

If subsequent to the publication of this report I feel that there are outstanding issues that I have identified and where I feel guidance should be given I will submit a further report to the Minister on this most urgent and important topic.

The issues raised in my reports cover some of the main areas where it is essential in a prison setting that human rights issues are to the fore.

You would now be entitled to ask if there is any procedure for ensuring that these human rights obligations are adhered to in our prisons. Independent oversight of prisons is mandated under international law. The most recent reference to this is in the Optional Protocol to the United Nations Convention against Torture. International best practice, under Principle 29 of the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment and Rule 55 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, requires that a system of independent monitoring be established so that transparency and accountability of the prison system can be achieved. Therefore, an independent inspectorate is vital in ensuring that prisoners’ rights are not violated.

In 2007 the Prisons Act created the statutory post of Inspector of Prisons for Ireland. Section 30(5) of the Act states that the Inspector is independent in the performance of his/her functions. You might ask am I truly independent? That is for others to answer. I would, however, suggest that I am and for these reasons:

- 1 As I have just stated my independence is guaranteed by Statute.
- 2 We live in a multi party democracy. No matter what political party is in power we have a robust opposition. Any matters relating to my functions can be raised in our Parliament.
- 3 We have a range of NGOs who take a keen interest in and report widely on the activities of organisations or regulatory bodies such as myself.
- 4 Above all we have a free press which is objective in reporting on matters of public interest and in this connection they have scrutinised various reports of mine that have come into the public domain.

There is also an international cross jurisdiction aspect to the inspection of prisons. This derives authority from such organisations as the United Nations and the Council of Europe. A Committee of the Council of Europe the CPT inspects prisons within its jurisdiction. The Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will create an additional cross jurisdictional inspection process.

I have unfettered access to all prisons, to all prisoners and to all records at any time of the day or night. I carry out regular inspections of prisons. Most of these are unannounced. I visit at night and at week ends. These visits are not for the purpose of wrong footing anyone but simply because in my view inspection systems which are entirely predictable as to timing no longer carry any measure of public credibility. The purpose of these visits is to ensure that standards in all prisons are maintained and are not dependent on the arrival or non arrival of the Inspector.

You can see that in Ireland there have been many changes in how prisons are run and in the new advice that has been given. It is therefore essential that all those charged with running prisons and those officers who are in contact with prisoners should have knowledge of and training in all aspects of human rights law in addition to their other training. All new recruits to the prison service undertake training which leads to a Higher Certificate in Custodial Care from the Institute of Technology in Sligo. I am also aware that the Irish Human Rights Commission is offering human rights training to the prison service. I cannot emphasise how important it is to have continuous training in order that all prison officers and those in management are kept up to date on all human rights obligations that they have towards those in their care.

I stated earlier that I wished to return to the topic that prison should only be used as a sanction of last resort. I would like to ask a number of questions and make a few brief comments.

Are our criminal laws adequate and robust enough to protect our society? I think we all would agree that we have very robust laws. They allow us imprison people. On 2 January 2008 (the day I took up my position as Inspector of Prisons) there were 3197 prisoners in our prisons. On 23 February of this year there were 4621 prisoners in our system an increase of 44.5%. Is society any safer because of this increase? I may be incorrect but I suggest that it is not.

In practical terms what does prison achieve? In virtually all cases nothing for the prisoner. It certainly doesn't do him any good and can do him great harm. I, of course, accept that persons who commit serious crimes must expect a prison sentence and a prison sentence must be available as a sanction for crimes in the mid serious category and even at times for low level criminality. I suggest that the major advantage of prison as far as the man on the street is concerned is that the offender will be taken out of circulation for a time and during this time he will not be a nuisance to society. I suggest that if you were to ask many victims of low level crime such as a person who is kept awake at night by disorderly conduct on the street, a lady whose handbag is stolen or a person whose wall is smeared with graffiti what they really wanted the criminal justice system to do for them I suggest you would find that what they really wanted was that the activity would cease. They would all be pleased to hear that the wrongdoer had been apprehended. They would take a passing interest in any subsequent court case and would in certain cases take some pleasure in the fact that the wrongdoer had been sent to prison but would then be disappointed if the offending behaviour restarted when the wrongdoer was released from prison.

Should we look at other ways of dealing with offenders who commit low level crime. In prisons we have seen how enlightened thinking in the field of human rights contributes to changes in the way prisoners are to be treated. Why not look to innovative approaches that have been tried in other jurisdictions to deal with offenders who commit low level crime?

I am referring to the concept of Problem Solving Justice. Why should a person who because of mental health issues, drug addiction, poverty, personality disorder or other deficiency necessarily have to wait until they are in the criminal justice system as we know it to get help? They may or may not get the help they require but one thing is almost certain and that is that they will end up with a criminal conviction and a possible prison sentence with all the negativity that that brings with it. I have seen at first hand these Problem Solving Courts in operation in the United States, England and New Zealand. They are non adversarial, they address the reasons for the criminality and help to divert people from low level crime. They bear no relation to our criminal courts. All evaluations of such courts point to a marked decrease in low level crime in the areas covered by such courts. Is this not what the man on the street wants? Large numbers of people can be processed through these courts.

All those operating in these courts would have to change work practices. These would be Judges, lawyers, prosecutors, probation officers, the social services, the addiction services and all who provide services to such courts. Such persons should be in the van advocating change. Would those of you here today, who fall into any of these categories of people, be prepared to advocate for such change? If you would and if new initiatives could be introduced it would lead to a reduction in the overcrowding of our prisons and at its worst no change in the safety of our neighbourhoods.

This is but one suggestion. The Minister in his speech that I have referred to suggests others. The White Paper on Crime also addresses this issue. All types of non custodial options should be considered for low level crime. I would, therefore, ask you to think outside the box as we should all contribute to the continued evolution of our criminal justice system.

To conclude I wish to share with you a comment of my colleague Dame Anne Owers, Inspector of Prisons for England and Wales who stated in 2008 – *“just because something has become normal, it does not become normative”*. Does this not sum up in eleven words why we must be vigilant in ensuring that the human rights of prisoners are vindicated and that our criminal justice system should continue to evolve in the light of new innovative thinking?

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